

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION**

| | | |
|---------------------------|---|-------------------------|
| UNITED STATES OF AMERICA, |) | |
| Plaintiff, |) | |
| |) | 3:14-cr-00018-RLY-CMM-1 |
| vs. |) | |
| |) | |
| MICHAEL W. McNARY, |) | |
| Defendant |) | |

REPORT AND RECOMMENDATION

On March 16, 2021, the Court held an initial hearing on the Petition for Warrant for Offender Under Supervision filed on March 9, 2021 [Doc. 68].

This matter was reconvened on March 29, 2021 for final hearing. Mr. McNary ("Defendant") appeared with FCD counsel, Gwendolyn Beitz. The Government appeared by Lauren Wheatley, Assistant United States Attorney, via phone. U. S. Probation appeared by Officer Andrea Hillgoth via phone. This matter is heard on a referral from U.S. District Judge Richard L. Young. The Defendant was advised that any recommendation from a magistrate judge was subject to review, acceptance, or rejection by the District Judge, who retains ultimate authority to adjudicate these matters.

The parties advised the Court at the outset of the hearing that an agreement was reached by which the defendant would admit Violations #2, 3 and 4 in the petition [Doc. 68] and the Government would dismiss Violation #1.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. §3583:

1. The Court advised Defendant of his rights and provided him with a copy of the petition. Defendant, by counsel, waived his right to a preliminary hearing.

2. After being placed under oath, Defendant admitted Violation 2, 3 and 4 in the 3/9/2021 petition.

3. The allegations to which Defendant admitted, as fully set forth in the petition, are:

**Violation
Number**

Nature of Noncompliance

2. "You shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon."

On March 9, 2021, Michael McNary was found in possession of a BB gun.

3. "The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance."

On March 9, 2021, Michael McNary was found in possession of methamphetamine. He admitted to using methamphetamine last on March 5, 2021.

As previously reported, on August 28, 2018, Michael McNary tested positive for amphetamines and admitted to "unknowingly ingesting Molly water."

4. "You shall pay any outstanding location monitoring fees incurred while on pretrial release."

The defendant has an outstanding balance of \$1,155.15 with B.I. He has made minimal payments during his term of supervision.

4. The parties stipulated that:

- (a) The highest grade of violation is a Grade **B** violation.
- (b) Defendant's criminal history category is III.
- (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is **8-14** months imprisonment.

5. Parties jointly recommended that defendant serve eight months with no further supervision upon release.

6. The Magistrate Judge, having considered the factors in 18 U.S.C. §3553(a), and as more fully set forth on the record, finds that:

(a) The Defendant made a voluntary and knowing admission of the violations set forth in the petition;

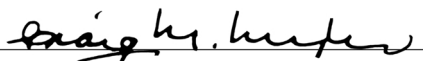
(b) The agreement of the parties is an appropriate resolution of this matter and the agreement is commended to the favorable consideration of the District Judge.

Recommendation

Consistent with the parties' agreement, the Magistrate Judge respectfully recommends the Defendant be sentenced to eight months in the custody of the U.S. Bureau of Prisons and that no term of supervised release be incorporated in the sentence. The defendant requested, and the Magistrate Judge concurs, that the District Judge incorporate a placement recommendation to the Bureau of Prisons referencing the BOP facilities at Marion, IL (the nearest facility to Evansville, IN).

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The Defendant is ordered detained pending the District Judge's review of the report and recommendation. The parties waived the 14-day period within which to appeal this report and recommendation.

Dated: March 29, 2021


CRAIG M. McKEE, Magistrate Judge
United States District Court
Southern District of Indiana

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